

**KENTUCKY PERSONNEL BOARD
MINUTES OF JUNE 13, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on, June 13, 2008, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodmann, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Robert B. Frazer, Member
M. Suzanne Cassidy, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Boyce A. Crocker, General Counsel

2. READING OF THE MINUTES OF REGULAR MEETING HELD MAY 16, 2008

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Ms. Goodmann seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek stated that at the April 2008 Board meeting, Mr. Andrews suggested changing some language in the minutes. Mr. Andrews' concern was what the Board members have access to before rendering a decision. The language currently in the minutes states as follows:

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

Mr. Sipek suggested adding the following cite: "(See KRS 13B.120)," which is the provision that discusses what is mandatory for the Board to look at and review.

Mr. Sipek further suggested adding the language, “The Board has access to and may review any part of the entire administrative record including video tapes of evidentiary hearings and pre-hearing conferences.” The “may” language suggests that the entire administrative record or tapes are not routinely reviewed. Mr. Sipek stated that he would provide a written copy of the suggested language to the Board at the July meeting for discussion.

Ms. Cassidy asked whether the Board members can “test credibility” as provided for in the *Anita Stotts* appeal, without reviewing the entire record and tapes. Mr. Sipek affirmed they could, because the Court in the *Stotts* appeal did not state whether the Board reviewed or did not review the record or tapes, just that the Board has authority to “test credibility.” Mr. Sipek stated that the ultimate test on appeal is, “Is there substantial evidence to support that finding?” Mr. Sipek stated that one conflict in the courts is “what level of explanation is required to change a factual finding.” Judge Shepherd (in *Stotts*) and one panel of the Court of Appeals (in *Baker v. KERS*) felt that “substantial evidence to support the finding” is enough, while Judge Acree and the other panel (in *Prince v. Veterans’ Affairs*) felt what is required is more of an explanation of why a recommended order was changed. However, both panels agree the Board has the authority to test credibility.

Mr. Sipek stated that the Board members have received a memo with attachments regarding ethical conduct, specifically important is conflict of interest.

Mr. Sipek stated that the Board members have also received a copy of the Franklin Circuit Court’s Opinion and Order on the *Stotts*’ case. However, he noted that the Justice and Public Safety Cabinet has appealed this matter to the Court of Appeals.

The next case Mr. Sipek referred to was the Judgment and Memorandum Opinion and Order received from Judge Adkins concerning *Nina Njoku v. Personnel Board*, 06-CV-19 EBA, which was filed in the Eastern District Court. The Court granted the Personnel Board’s Motion for Summary Judgment and agreed that the Personnel Board is entitled to Eleventh Amendment sovereign immunity. Mr. Sipek stated that if this case is appealed to the Sixth Circuit, he is confident that the Board’s case is strong.

Mr. Sipek updated the Board concerning the office move, advising that the carpet was installed in the conference/hearing rooms. He advised that the rooms may be ready for the July 2008 Board meeting. He encouraged the Board members to stop by anytime and make any suggestions as to how the rooms could be set up.

In conclusion, Mr. Sipek stated that although Mr. Crocker has quite a bit of military duty to fulfill this summer; Mr. Crocker is available via e-mail, should anyone have any legal questions. Mr. Sipek stated that he could be contacted as well.

Chairman Higgins asked about the Executive Branch Code of Ethics specifically concerning the two elected members. Mr. Sipek stated that the two elected members must be free from conflicts in their full-time state job and as members of the Board.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked for the Personnel Cabinet's Report.

4. PERSONNEL CABINET'S REPORT

Secretary Nikki Jackson was present for the Personnel Cabinet and reported the following:

Secretary Jackson provided a handout to the Board members regarding her "First 180 days – Noteworthy Accomplishments" within the Personnel Cabinet. She informed the Board that the Personnel Cabinet is going through a transformation and a new "mission vision values" and invited the Board members to visit the Personnel Cabinet. The Cabinet's creed is "Serving the people who serve the people."

Secretary Jackson stated the Cabinet has established a Center for Strategic Innovation (CSI). The focus of CSI is to look at the "Cabinet of tomorrow," because human resource changes tend to lag behind. CSI is both a consulting body and an advisory body for the Cabinet. They are to find the services, products, and opportunities in order to help illuminate the Cabinet's need for change. Secretary Jackson stated that Vice-Chairman Tina Goodmann is part of the CSI team and is doing a magnificent job heading up communications for that area.

Secretary Jackson stated that the image of the Cabinet is being revamped in order to keep up with its new "mission vision values." The Cabinet's web site will be rededicated and more user friendly. She is concerned about how the Cabinet is marketing itself, not only to current employees but to potential employees as well. Again, the CSI team is responsible for leading the Cabinet in this area.

Three examples of realigning tasks:

- ❖ EEO group – has invoked its jurisdiction to conduct investigations. Therefore, EEO will be both an advisory body and an investigative body.
- ❖ Recruiting – is now under the Staffing group. Specifically relating to job fairs, recruiting fairs, hard to fill jobs, and high turnover.
- ❖ Kentucky Employee Educational Assistance Program (KEEAP) has been revamped and moved under the Governmental Services Center (GSC).

The Cabinet is becoming as visible as possible. Secretary Jackson has regular meetings to connect with other Cabinet Secretaries. The Cabinet is also forming partnerships outside state government and taking the opportunity to learn from private sector colleagues as it relates to their successes in human resources.

An HR Leadership Consortium has been initiated and they meet every month across state agencies and Cabinets.

Each month the Cabinet celebrates diversity, i.e. February – Black History, March – Women’s History, May – Asian Pacific American Heritage, September – Hispanic Heritage, October - Disability Employment Awareness, November – American Indian Heritage.

Secretary Jackson advised that the Kentucky Human Resources Information System (KHRIS) is set to be implemented January 1, 2009.

Secretary Jackson advised that the Cabinet is piloting a program “Journey to Wellness,” kickoff for Cabinet employees is June 20, 2008, and will be implemented statewide on July 1, 2008.

In conclusion, Secretary Jackson stated that in keeping with the Cabinet’s vision for human resource practicing, she and her leadership team came up with the following questions that needed to be answered:

How do we help the Commonwealth of Kentucky become an employer of choice?
How do we promote a learning and developing organization?
How do we look at employee value?
How do we promote a one-employer culture?

Secretary Jackson advised that Governor Beshear signed an Executive Order implementing the Employee Advisory Council, which will work with union groups so employees have a voice, effective July 1, 2008. Governor Beshear also signed an Executive Order expanding EEO protection against sexual orientation discrimination. In addition, the Personnel Cabinet is available to investigate complaints of discrimination.

Chairman Higgins applauded Secretary Jackson and the Personnel Cabinet for their accomplishments and for being pro-active.

5. MOTIONS

- A. Brenda Hendrix v. Education Cabinet
--Appellee’s Motion to Clarify Board’s Final Order
--Appellant’s Response to Motion to Clarify

[The parties provided written pleadings and did not appear in person.]

6. ORAL ARGUMENTS

- A. ~~Robert Bickett v. Justice and Public Safety Cabinet~~ – **Moved to August**

7. **REQUESTS FOR INVESTIGATION - None**

8. **CLOSED SESSION**

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Hendricks seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:15 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 5-0 (11:10 a.m.)

9. **CASES TO BE DECIDED**

MOTIONS

- A. Brenda Hendrix v. Education Cabinet
--Appellee's Motion to Clarify Board's Final Order
--Appellant's Response to Motion to Clarify

Ms. Cassidy moved to issue an order clarifying the Board's previous order that the Agency is directed to comply with and make Ms. Hendrix whole. Mr. Frazer seconded and the motion carried 5-0.

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. ~~Robert Bickett v. Justice and Public Safety Cabinet~~ -- **Moved to August**
B. Sherman DeMeary v. State Fair Board

Mr. Frazer moved to note Appellee's exceptions and to accept the recommended order, with clerical corrections, sustaining the appeal. Ms. Cassidy seconded and the motion carried 6-0, with Chairman Higgins voting.

C. Robert Redmon v. Justice and Public Safety Cabinet

Ms. Hendricks moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0, with Ms. Cassidy recusing.

D. Sandra Britton v. Department of Military Affairs

Ms. Goodman moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

E. Rose Mary Byrd v. Transportation Cabinet (3 appeals)

Ms. Gibson moved to accept the recommended order dismissing one appeal and sustaining two appeals. Mr. Frazer seconded and the motion carried 5-0.

F. Wesley Collins v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Goodman seconded and the motion carried 5-0.

G. Monica Flowers v. Justice and Public Safety Cabinet (2 appeals)

Ms. Gibson moved to accept the recommended order sustaining one appeal and dismissing one appeal. Mr. Frazer seconded and the motion carried 5-0.

H. ~~Allen Harris and David Smith v. Justice and Public Safety Cabinet~~
(Moved to July)

I. Blaine Kohl v. Office of the Attorney General

Chairman Higgins moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 6-0, with Chairman Higgins voting.

J. Richard Lacefield v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0, with Ms. Cassidy recusing.

K. Donald Martin v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

L. Suzanne Roberts v. Justice and Public Safety Cabinet

Ms. Goodmann moved to accept the recommended order sustaining the appeal. Mr. Frazer seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

M. Ronnie Goodman v. Transportation Cabinet

N. Misty Shulz v. Personnel Cabinet

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Goodmann seconded and the motion carried 5-0.

11. **WITHDRAWALS**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 5-0.

- A. Judy Baker v. Personnel Cabinet
- B. Samuel Melton v. Justice and Public Safety Cabinet
- C. Leroy Newsome v. Transportation Cabinet
- D. Edwin Scott Pieratt v. Transportation Cabinet
- E. Jean Reccius v. Cabinet for Health and Family Services
- F. John Sewell v. Justice and Public Safety Cabinet (2 appeals)
- G. Marci Walker v. Health and Family Services
- H. John Kramer v. Department of Veterans Affairs (2 appeals)
- I. Brittany Ledet v. Personnel Cabinet
- J. James R. Mitchell, Jr. v. Personnel Cabinet
- K. Melissa Jan Williamson v. Environmental and Public Protection Cabinet

12. **SETTLEMENTS**

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 5-0.

- A. William Mark Cassity v. Environmental and Public Protection Cabinet
- B. Anne Brodeur v. Environmental and Public Protection Cabinet
- C. Anna Hughes v. Cabinet for Health and Family Services

- D. William Stambaugh v. Justice and Public Safety Cabinet
- E. William Gordley v. Commerce Cabinet

13. **OTHER**

- A. Annual salary increments for Executive Director and General Counsel

Ms. Cassidy moved to defer this matter to the July 2008 Board Meeting. Mr. Frazer seconded and the motion carried 6-0 (with Chairman Higgins voting).

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Mr. Frazer moved to adjourn. Ms. Hendricks seconded, and the motion carried 5-0. (11:15 a.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Robert B. Frazer, Member

M. Suzanne Cassidy, Member